

RESPONSE UNDER 37 C.F.R. § 1.116  
EXPEDITED PROCEDURE  
TC/A.U. 3761

### **REMARKS/ARGUMENTS**

Claims 1-17 are presented for Examiner Erez's consideration. Applicants' attorney thanks the Examiner for his comments. Applicants' attorney notes the Examiner's statement that Claim 18 is allowed over the prior art of record.

Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

By way of the Office Action mailed July 1, 2003, Examiner Erez rejected claims 1-17, 19 and 20 under 35 U.S.C. §103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,582,161 to Kee in view of U.S. Patent Number 5,343,857 to Schneider et al.

By way of the Office Action mailed July 1, 2003, Examiner Erez rejected claims 21-25 under 35 U.S.C. §103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,582,161 to Kee in view of U.S. Patent Number 5,343,857 to Schneider et al and further in view of U.S. Patent Number 6,168,758 to Forsberg et al.

In Paragraph 22 of the July 1, 2003 Office Action, Examiner Erez addresses the Applicants' remarks to the previous Office Action. In his response Examiner Erez contends "that Kee does teach a flap that is opened by the catheter assembly 11." The Examiner's comments regarding the present application state "The claims as recited merely states that the flap valve is opened by the catheter but does not recite how it is opened by the catheter. Therefore, Kee teaches a flap valve that is opened by the catheter in conjunction with an adaptor since the applicant has not limited the claim to a flap valve being directly opened by the surface of the catheter itself."

Applicants respectfully submit that the Examiner has misconstrued or mischaracterized at least one of the references cited against the present application. For example, the Examiner has contended that Kee teaches a flap opened by a "catheter assembly" and then later contends that the flap is not really opened by the catheter assembly but by the catheter in conjunction with an adaptor. A first misunderstanding by the Examiner arises with the use of the term "catheter assembly 11", as in Kee reference numeral 11 refers to a connector body. Even if one were to use the Examiner's generous description of the connector body 11 of Kee, Kee is clear that the catheter is identified as reference numeral 3e. It is and has been the Applicants' position that the "catheter assembly 11/connector body" of Kee is not the same as the catheter 3e of Kee. That is, the mere fact that the term catheter assembly has the word catheter in it, does not mean that the catheter itself is contacts or is capable of opening the valve. In fact, Kee expressly states that the catheter 3e of Kee does not act upon the valve,

RESPONSE UNDER 37 C.F.R. § 1.116  
EXPEDITED PROCEDURE  
TC/A.U. 3761

but rather that it is the endotracheal tube 13 which engages the distal end of the protective sleeve 12 in the connector body 11 and pushes the sleeve 12 backward. "The backward action causes the flaps 20 of the protective sleeve 12 to be forced open by the leading edge of tubular guide member 36 of the connector body 11." (emphasis added) (Column, 4, lines 41-44). Guide member 36 is not the catheter 3e. In column 5, lines 20-24, Kee states "after the adapter 10 is fully engaged, medical personnel advance the catheter through the catheter guide and into the endotracheal tube ..." (emphasis added). Thus, it is explicit that the catheter 3e of Kee does not open or act upon the flaps 20. Thus, as the Applicants' have indicated in their response to previous Office Actions there is no teaching or suggestion in Kee or Schneider of opening the valve by the catheter itself and not an adapter through which a catheter happens to pass or an assembly containing a catheter as the Examiner has suggested. Any contention to the contrary is improper in view of the language of Kee. Therefore, it is Applicants' position that the Examiner's rejection is improper and should be withdrawn.

Nevertheless, Applicants have amended claims to remove the Examiner's concern. The presently amended claims require the catheter to open the valve directly. The presently amended claims are still consistent with Applicants' previous responses. Applicants' submit that the previously presented claims of the present invention are and were novel and non-obvious over the prior art and that the amendments made herein are not for purposes of patentability.

With regard to the Examiner's rejection of Claims 22-25, each depends either directly or indirectly from Claim 1 and recite the present invention in varying scope. Notwithstanding the remarks above which demonstrate the Examiner's misunderstanding or mischaracterization of Kee, in light of the above amendments to Claims 1 and 11, it is the Applicants' contention that not only are Claims 1 and 11 allowable as amended but so too are each of the remaining claims which depend from Claims 1 and 11.

Applicants respectfully request the rejections of the claims under 35 U.S.C. §103 be withdrawn in light of the preceding amendments and remarks.

For the foregoing reasons, the application and claims are believed to be in condition for allowance and such action is respectfully requested. However, should any questions arise with regard to this matter the Examiner is encouraged to contact the undersigned at (770)-587-7183. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

RESPONSE UNDER 37 C.F.R. § 1.116  
EXPEDITED PROCEDURE  
TC/A.U. 3761

Respectfully submitted,  
CRUMP ET AL.

By: 

William W. Letson

Registration No.: 42,797

CERTIFICATE OF FACSIMILE

I, Veronica A. Trent, hereby certify that on October 24, 2003 this document is being sent to Examiner Darwin P. Erezzo at the U.S. Patent Office by facsimile to the following number: (703) 872-9303.

By: 

Veronica A. Trent

RECEIVED  
CENTRAL FAX CENTER

OCT 24 2003

OFFICIAL